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In re Application of :
Maximiliano Vasquez et al :
Serial No.: 09/992,524 : PETITION DECISION
Filed: November 13, 2001 :
Attorney Docket No.: 011823-008120 :

This is in response to the petition under 37 CFR 1.181, filed February 2, 2006, requesting Supervisory review of an examiner's refusal to enter an amendment. The delay in acting on this petition is regretted, however, the paper was not entitled "PETITION" and, therefore, not properly forwarded for consideration by the proper authority.

BACKGROUND

The file history shows that applicants filed an amendment to amend the specification on January 22, 2003, prior to any Office action in the application. The amendment removed the descriptive word "mature" from the description of Figures 2A and 2B. The examiner in the Office action mailed March 15, 2005, objected to the amendment to the specification as changing the scope of the description and thus being new matter. Other rejections of the claims were also made, but are not pertinent to this objection.

Applicants replied on June 20, 2005, submitting new Figures 1A, 1B, 2A and 2B to correct an underlining error in the sequences shown to conform to conventional practice. Applicants also argued that the amendment to the specification should be entered and not objected to as it does not contain new matter, but merely corrects an error in the description of the drawings to that which is actually shown. Applicants offer comparison to other drawings of the application and other published documents showing how mature and immature sequences are shown. Applicants replied to the other rejections of record appropriately. The amendment was considered non-compliant (see Office action mailed June 23, 2005) and a second amendment filed on June 24, 2005, followed by a compliant amendment, filed on July 11, 2005, were provided.

The examiner mailed a Final Office action to applicants on September 29, 2005, maintaining the objection to the amendment to the specification as introducing new matter as well as the other rejections of record.

Applicants filed a Notice of Appeal on February 2, 2006 and this petition. Subsequently applicants have filed an RCE request and an amendment and argument responsive to the last Office action which have been processed accordingly.

DISCUSSION

An application describing an invention by means of a specification and drawings is considered to be complete as of the filing date. However, it is recognized that errors may still be present in such specification and drawings. Such is evidenced by applicants' amendment of Figures 1A, 1B, 2A and 2B during prosecution of this application to conform certain underlining to conventional standards. Such amendment of the drawings did not change the scope of the invention described and has been permitted by the examiner. The examiner, however, has objected to amending the specification to delete the descriptor "mature" in describing Figures 2A and 2B. Applicants argue that the examiner's objection is improper.

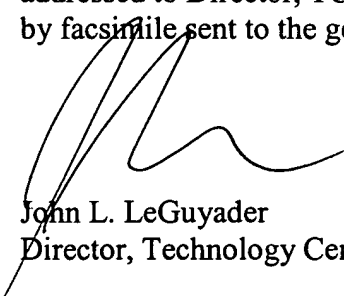
Applicants argue and provide reference for the fact that the sequences shown in Figures 2A and 2B relating to the HuZAF antibody shows both the heavy and light portions of the chain, including "leader peptides". The descriptor "mature" in referring to these chains is conventionally associated with chains which do not have "leader peptides". Thus to use the descriptor "mature" in the specification to describe the sequences shown by Figures 2A and 2B is improper and such descriptive error would be readily recognized by one of ordinary skill in the art based on other portions of the specification, such as Figure 3, which does show a "mature" sequence and other publications which also show the same conventional notation.

The examiner argues that the parent of this application did not have the descriptor "mature" deleted from the specification and implies that to do so here would be improper and constitute new matter. However, errors in the specification, especially where the specification is inconsistent with itself or the drawings, may be corrected at any time, even after a patent has issued. On thorough review of the proposed amendment, entering thereof does not introduce new matter and the examiner's objection to the specification as containing new matter, if entered, is not found to be justified. Entry of the amendment is approved and will not be objected to.

The petition is **GRANTED**.

The application will be forwarded to the examiner for further consideration of the RCE and amendment filed June 2, 2006.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.



John L. LeGuyader
Director, Technology Center 1600